



PATENT
Customer No. 22,852
Attorney Docket No. 08350.3313

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Owen C. KOLSTAD et al.) Group Art Unit: 3748
Application No. 10/743,753) Examiner: Tran, Binh Q.
Filed: December 24, 2003) Confirmation No.: 8934
For: PARTICULATE TRAP)
)

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants respectfully request a pre-appeal brief review of the Final Office Action mailed November 30, 2005. This Request is being filed concurrently with a Notice of Appeal.

This pre-appeal brief request for review is being filed after the submission of an Amendment After Final, which has not been entered. Therefore, the focus of this Request is on the rejections with respect to claims 15 and 16, which include clear errors.

I. Requirements For Submitting a Pre-Appeal Brief Request for Review

Applicants may request a pre-appeal brief review of rejections set forth in an Office Action if (1) the application has been at least twice rejected; (2) Applicants

concurrently file the Request with a Notice of Appeal prior to filing an Appeal Brief; and
(3) Applicants submit a Pre-Appeal Brief Request for Review that is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. See Official Gazette Notice, July 12, 2005.

Applicants have met each of these requirements and therefore request review of the Examiner's rejections in the Final Office Action for the following reasons.

II. The 35 U.S.C. § 102(b) Rejection with respect to Claims 15 and 16 is Legally Deficient

A. The Examiner Failed to Establish a Case of Anticipation in Rejecting Claims 15 and 16 under 35 U.S.C. § 102(b).

To establish a case of anticipation, each and every element set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. (See M.P.E.P. § 2131). For at least the following reasons, Applicants respectfully submit that the Examiner has failed to establish a case of anticipation in connection with claims 15 and 16 under 35 U.S.C. § 102(b).

Anticipation has not been established with respect to claim 15 for at least the reason that Gillingham et al. fails to disclose each and every claim element. For example, independent claim 15, from which claim 16 depends, recites a combination including, among other things, selectively applying electrical current to at least one of a plurality of filter sections of the at least one filter to separately regenerate the at least one filter section. Gillingham et al. fails to disclose selectively applying electrical current to at least one of a plurality of filter sections to separately regenerate the filter section. (See Reply to Office Action ("Reply") dated September 2, 2005, page 9 and Amendment

After Filed ("Amendment") dated March 16, 2006, page 8). In fact, Gillingham et al. describes an entirely different regeneration method for a filter trap apparatus that includes igniting "combustion air" within a filter chamber to regenerate the filter. Whereas the presently disclosed claimed invention generates heat for regeneration through the application of electrical current to the filter, Gillingham et al. generates heat through a combustion process -- i.e., one that doesn't even involve the use or application of electrical current. Accordingly, because Gillingham et al. does not disclose every claim element of independent claim 15, or claim 16 that depends therefrom, the 35 U.S.C. § 102(b) rejection with respect these claims should be withdrawn.

As further evidence that Gillingham et al. fails to disclose every claim element, the Examiner has not even addressed the feature of claim 15 requiring the application of electrical current to a filter. (See Office Action dated June 3, 2005 and final Office Action dated November 30, 2005). Nowhere does the Examiner even contend that this claim feature is included in the system of Gillingham et al. Furthermore, the Examiner has not met the requirement set forth in M.P.E.P. § 707.07(f), having twice failed to address Applicants' arguments pertaining to this feature of Applicants' claim 15.

Because the Examiner has failed to established a case of anticipation with respect to claim 15, or claim 16 that depends therefrom, the Examiner's basis for the 35 U.S.C. § 102(b) is legally deficient. Accordingly, Applicants respectfully request the rejection be withdrawn and the claims allowed.

III. The 35 U.S.C. § 102(e) Rejection with respect to Claims 15 and 16 is Legally Deficient

A. The Examiner Failed to Establish a Case of Anticipation in Rejecting Claims 15 and 16 under 35 U.S.C. § 102(e).

To establish a case of anticipation, each and every element set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. (See M.P.E.P. § 2131). For at least the following reasons, Applicants respectfully submits that the Examiner has failed to establish a case of anticipation in connection with claims 15 and 16 under 35 U.S.C. § 102(e).

Anticipation has not been established with respect to claim 15 for at least the reason that Peter et al. fails to disclose every claim element. For example, independent claim 15, from which claim 16 depends, recites a combination including, among other things, flowing exhaust through a plurality of inlets, each inlet directing a portion of the exhaust flow to an associated filter division, each filter division being fluidly isolated from at least one other filter division and having at least one filter. Peter et al. fails to disclose, at least, a plurality of filter divisions fluidly isolated from at least one other filter division.

In the Office Action mailed November 30, 2005, the Examiner maintained that the plurality of dividers (e.g., 68) fluidly isolate one or more of the plurality of filters into filter sections. (See Office Action mailed November 30, 2005, page 5). Neither bottom cap 68 nor top cap 66, however, provides fluid isolation between adjacent filter members. This fact is clear in view of the apertures associated with each of bottom cap 68 and top cap 66 that actually enable fluid communication among the filter sections 60 and 62.

(See Amendment, page 10). For at least this reason, Peter et al. fails to disclose a plurality of filter divisions fluidly isolated from at least one other filter division, as recited in Applicants' claim 15.

Because the Examiner has failed to establish a case of anticipation with respect to claim 15, or claim 16 that depends therefrom, the Examiner's basis for the 35 U.S.C. § 102(e) is legally deficient. Accordingly, Applicants request the rejection be withdrawn and the claims allowed.

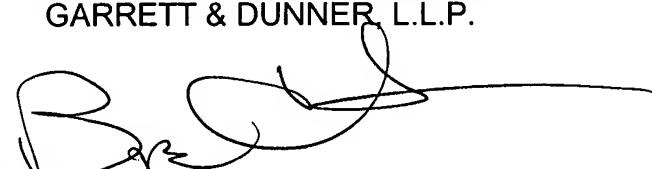
IV. Conclusion

In light of the above arguments and those presented in the Reply and Amendment, Applicants respectfully submit that the Section 102 rejections of claims 15 and 16 are legally deficient. Therefore, these rejections should be withdrawn.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 1, 2006

By: 
Brad C. Rametta
Reg. No. 54,387